IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2191 of 1992

For Approval and Signature:

HON'BLE MISS JUSTICE R.M. DOSHIT

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE TRANSPORT CORPORATION

Versus

BHANUMATI S SONI

Appearance:

1. Special Civil Application No. 2191 of 1992

MR MD PANDYA for Petitioner

MR MUKESH H RATHOD for Respondent

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 05/10/2004

ORAL JUDGEMENT

The petitioner-Gujarat State Road Transport Corporation [hereinafter referred to as, "the

Corporation"] challenges the judgment and award dated 11th October, 1991 passed by the Industrial Tribunal, Ahmedabad [hereinafter referred to as, "the Tribunal"] in Reference [IT] No. 207 of 1989.

In the year 1972, the Corporation had created a post of part-time Library Clerk. The respondent herein [hereinafter referred to as, "the Workman"] was employed by the Corporation as a part-time Library Clerk for two hours daily. Since the year 1980, hours of her duty were increased to four hours daily and since the year 1987 it was increased to five hours daily. The wages of the workman was accordingly improved from time to time. On 23rd June, 1988, demand was raised by the union on behalf of the workman that the workman shall be treated as full-time Library Clerk and that she should be paid the amount of difference of wages. As the said demand was not accepted by the Corporation, the union raised industrial dispute which came to be referred to the Industrial Tribunal and registered as above.

The claim was contested by the Corporation. According to the Corporation, the Corporation did not need a full-time Library Clerk. The library was maintained for the benefit of the employees. It was not kept open for the whole day. Hence, there was no need for creating a full-time post of Library Clerk or for full-time appointment of Library Clerk.

The Tribunal, by the impugned award, rejected the claim that the workman should be treated to be full-time Library Clerk and that she be paid the amount of difference of wages. The Tribunal rejected the claim for grant of pay scale for Library Clerk as was prevailing under the Municipal Corporation. The Tribunal rejected the defence of the Corporation also. The Tribunal did not accept that there was no sufficient work for a Library Clerk and that there was no necessity for a full time Library Clerk. Eventually, the Tribunal directed the Corporation to create a post of full-time Library Clerk in the payscale prevalent for a Clerk; to appoint the workman as a Library Clerk and to allow her two increments. Feeling aggrieved, the Corporation has preferred the present petition.

The order of the Tribunal is ex facie erroneous. The Tribunal has erred in directing the Corporation to create a post and to appoint the workman in the said post. By issuing such directions, the Tribunal has traversed beyond its jurisdiction. The full-Bench of this Court comprising Messrs. Justice K.R Vyas, A.R Dave

& K.S Jhaveri, by its judgment and order dated 9th July, 2004 in the matter of Amreli Municipality vs. Gujarat Pradesh Municipal Employees' Union [Special Civil Application No. 5746 of 1999 and other petitions] has considered the question of jurisdiction of the Labour Courts/Industrial Courts/Tribunals. It has been held that, "..Even if it is held that the Labour Court/Industrial Tribunal has wide jurisdiction to alter service conditions, it can exercise such powers subject to the recruitment rules, availability of sanctioned posts and subject to the grant of limits of budgetary provisions. When there is no permanent post, no direction can be given to the authorities to absorb daily wage employees by creating new posts." Creation of posts is an administrative function to be performed by the Corporation. The Tribunal shall not interfere in such matters. In the present case, in absence of any evidence in support of the claim of the workman, the Tribunal has held that there shall be a full-time post of Library Clerk. Without referring to the nature of duties to be performed and the qualification of the workman, the Tribunal has issued direction to appoint the workman as full-time Library Clerk and to give her two advance increments. Thus, the Tribunal has overstepped its jurisdiction and has usurped the administrative powers of the Corporation. The Tribunal has erred in exercising jurisdiction not vested in it.

In above view of the matter, the petition is allowed. The impugned judgment and award dated 11th October, 1991 passed by the Industrial Tribunal, Ahmedabad in Reference [LCA] No. 207 of 1989 is quashed and set-aside. The claim of the workman stands rejected. Rule is made absolute. There shall be no order as to cost.

{Miss R.M Doshit, J.}

Prakash*